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FARAD CONTINUATION SHEET

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1831 OF 2004.

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Mrs. P.H. Kantharia, A.P.P., for the respondent-State.

CORAM: S.S. PARKAR &
ANOOP V. MOHTA, JJ.

DATED: 26TH AUGUST, 2005.

P.C.:

. This Petition has been filed, challenging the order of the Deputy Inspector General of Prisons, rejecting the application for furlough.

2. Reply Affidavit dated 27th January, 2005, is filed by Mr.D.G. Khandare, Jailor Group II, attached to Kolhapur Central Prison, Kolhapur, stating therein that the petitioner was convicted for offence under Section 302 of IPC. He had applied for furlough on 24th December, 2002, but the same was rejected by the order dated 21st March, 2003, by the Deputy Inspector General of Prisons, Western Region,

Pune, because of the adverse Police Report dated 13th January, 2003, submitted by the Commissioner of Police, New Bombay. The Affidavit further states that two witnesses, who had deposed against the petitioner, had complained to the Police that the petitioner and his brother who is co-accused had threatened them. The accused stays in the same locality as that of the witnesses and, therefore, there was apprehension on the pat of the witnesses.

3. In our view, that apprehension may continue for years to come, but on that ground, the authorities cannot decline to release the petitioner on furlough permanently. Since the earlier application was made in December 2002 and the order thereon was passed in March 2003, due to the lapse of time it would be desirable that fresh application is made by the petitioner which can be considered by the authorities on its own merits, particularly if the petitioner offers to stay at some other place than in the vicinity of the witnesses. The authorities may also consider imposing more stringent conditions so that there will be no

apprehension of threat to the witnesses.

4. In the result, we permit the petitioner to make fresh application for his release on furlough. When such application is made, the authorities are directed to consider it on its own merits considering the observations made in this order. The Petition shall stand disposed of.

[S.S. PARKAR, J.]

[ANOOP V. MOHTA, J.]